IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 28243 of 2006(K)

PETITIONER:

SANIL KUMAR.K., S/O.LATE SAKTHIDHARAN,
AGED 24 YEARS, KIDASSERRY HOUSE,
KADANGODE, THURUTHY P.O., KASARAGOD DISTRICT.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
PRINCIPLE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

3. THE SUPERINTENDENT OF POLICE,
KASARAGOD.

BY SR.GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/10/2007, THE COURT ON 15/10/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF DEATH CERTIFICATE DT.8.8.2001 ISSUED BY THE CHERIYATHUR VILLAGE PANCHAYAT.

P2: TRUE COPY OF RELEVANT PAGE OF THE SSLC BOOK OF THE PETITIONER.

P3: TRUE COPY OF GO(P)NO.12/99/P&ARD DT.24.5.99.

P4: TRUE COPY OF APPLICATION SUBMITTED BY PETITIONER ON 14.7.2003 IN THE PRESCRIBED FORM.

P5: TRUE COPY OF LETTER DT.29.8.2003 ISSUED BY R3.

P6: TRUE COPY OF LETTER DT.12.12.2003 ISSUED BY R3.

P7: TRUE COPY OF JUDGMENT DT.30.11.04 IN O.P. NO.3226/95 OF THIS HON'BLE COURT.

P8: TRUE COPY OF LETTER DT.19.10.2006 GIVEN TO R3 BY PETITIONER ALONG WITH COPY OF EXT.P7.

P9: TRUE COPY OF GO(RT) NO.72/95/SCST DT.10.2.95.

P10: TRUE COPY OF THE INTERIM ORDER DT.1.3.95 IN CMP NO.5871/1995 IN O.P. NO.3226/1995 OF THIS HON'BLE COURT.

TRUE COPY

PA TO JUDGE

V.GIRI, J.

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W.P.(C) No.28243 of 2006

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Dated this the 15th day of October, 2007.

JUDGMENT

The petitioner's father was working as a Head Constable in the Police Department when he passed away on 18.8.1999. Apparently petitioner's father had secured appointment on the premise that he belongs to a Scheduled Caste. It seems that his claim in that regard was found to be untenable and fresh proceedings were initiated against the petitioner's father and petitioner's father's brother by the Scheduled Castes and Scheduled Tribes Development (E) Department by an order dated 10.2.1995. By Ext.P9 order, produced along with reply affidavit, the Government declared as follows:

> "(i) Government declare that S/Sri.K.S.Sreenivasan, K.S.Sakthidharan and members of their family do not belong to Moger (SC) community but belong to Valan (OBC) community.
>
> (ii) None of the members of this family shall be entitled to any of the benefits of Scheduled Castes. If any member of the family had availed of any of the benefits exclusively meant of members of Scheduled Caste, all such benefits shall be stopped and the financial benefits, if any availed of shall be recovered.
>
> (iii) If the caste entry recorded in the S.S.L.C. Book of any of the members of this family is Moger (SC), it shall be

got corrected as Valan (OBC).

(iv) As S/Sri.Sreenivasan and Sakthidharan are not entitled to the benefits of Scheduled Castes, if their appointments in the CIFNET and in the State Police Department are on consideration as members of Scheduled Castes, action shall be taken to appoint members of Scheduled Castes in the respective posts.

(v) All the S.C. certificates issued to the members of this family shall be treated as cancelled. S.C. certificates shall not be issued to any of the members of this family hereafter."

It was Ext.P9 order and the report of KIRTADS that were challenged in O.P. No.3226/1995 by K.S.Sreenivasan and K.S.Sakthidharan. Further proceedings in pursuance of Ext.P9 and the report of KIRTADS were under stay and it was on the strength of the order of stay that Sakthidharan continued in service. As noted above, Sakthidharan died in the year 1999.

2. The petitioner who was a minor at the time of death of his father on 18.8.1999, attained majority on 18.8.2000. He made an application, Ext.P4, for appointment under the Dying-in-harness scheme, Ext.P3. By Ext.P5 he was directed to produce certain documents and thereafter vide Ext.P6 it was observed that the petitioner's claim will be considered only after disposal of O.P. No.3226/1995. Thereafter O.P. 3226/1995 was taken

up for hearing on 30.11.2004. The surviving petitioner in the said O.P. namely, K.S.Sreenivasan sought leave to withdraw the O.P. At the same time, though K.S.Sakthidharan had passed away in the year 1999, none of his legal heirs were brought on record. Be that as it may, the O.P. was dismissed as withdrawn and this court had observed that all the interim orders will stand vacated.

3. With the dismissal of O.P. 3226/1995, technically, there is nothing which stands in the way of the petitioner's application for appointment under Dying-in-harness scheme being considered on merits. Learned counsel for the petitioner therefore prays that a direction be issued to the respondents to consider his application on merits. He contends that Sakthidharan was actually in service when he passed away on 18.8.1999. Therefore, the petitioner, his son, should be treated as eligible for being considered for appointment under the Dying-in-harness scheme.

4. Learned Senior Government Pleader opposes this prayer. He submits that vide Ex.P9 order there was a positive declaration by the Government that Sakthidharan and members of his family do not belong to Scheduled Caste. The order was under challenge in O.P. No.3226/1995.

But for the interim order Sakthidharan would have ceased to be in service in 1995 itself and ultimately when the O.P. was dismissed as withdrawn, the orders impugned there must be deemed to have come into effect from the date on which they were passed.

5. I heard the learned counsel for the petitioner and the learned Senior Government Pleader. Even if it is assumed for argument's sake that Sakthidharan was in service, on the basis of interim order passed by this court on 2.6.1995, it does not really improve the case of the petitioner. Even if the petitioner's prayer is accepted, this court can only direct the respondents to consider the claim of the petitioner. But in the light of the fact that Ext.P9 order should be deemed to be effective from the date on which it was passed and it declares the ineligibility of Sakthidharan to have been appointed in service as a member of the Scheduled Caste, petitioner's entitlement to be considered as a dependent of a person who was in service becomes suspect and untenable. The legal representatives of Sakthidharan ought to have continued to prosecute O.P. No.3226/1995. Be that as it may, when the O.P. was dismissed as withdrawn, that remedy also became foreclosed as such.

6. For all these reasons, I find that respondents cannot be directed to consider the claim of the petitioner for appointment under the Dying-in-harness scheme, in the circumstances where Sakthidharan's appointment was found to have been illegal by the Government as per Ext.P9 order and though Ext.P9 order was challenged in O.P. No.3226/1995, the same should be treated as having been upheld on the dismissal of the said petition as withrawn. I find no merit in the W.P. The same is dismissed.

V.GIRI
Judge

pms